

Application/Control Number: 10/603,235

APR 13 2010

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/603,235 Confirmation No. 5606
5 Applicant : James A. Lesch, Jr.
Filed : June 24, 2003
TC/A.U. : 3752
Examiner : Patrick F. Brinson

10 Docket No. : NWK1581
Customer No. : 30245

15 Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

20 **Supplemental Information to a Petition under 37 CFR 1.137(b)**

Assistant Commissioner for Patents

Box Petitions

25 P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

This information is supplemental to a petition filed September 28, 2009, currently pending. The
30 pending petition under 37 CFR 1.137(b) was filed after a petition under 37 CFR 1.137(a), filed
11/1/2006, and renewed 7/20/2007, 5/19/2008 and 12/12/2008, was denied. Applicant's counsel

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again states that the abandonment of this application was unintentional due to the non-receipt of the Notice of Allowance dated September 28, 2005. Upon further review of assertions made by the Patent Office in denials of the prior petitions filed, Applicant enters the following statements into record.

5

1. Application was filed by Customer Number;

OIPE did not link Application to Customer Number

The Office has noted that in both the declaration and the transmittal letter submitted on filing the application, practitioner specified Customer Number 30245. However, the Office is incorrect in its assertion that the Office properly selected the Customer Number at the time of filing. Rather, the Office improperly entered the practitioner's address at the time of filing, despite both 37 CFR 1.33(a) and the clear indication, by check box, that the Customer Number be selected by OIPE. Unfortunately, such a selection contrary to both clear selection by a practitioner and 37 CFR 1.33(a) is not an uncommon experience. To wit, this practitioner has had to file several other petitions on the same basis, has provided multiple examples of this procedure not being followed, and has requested that the Office correct and reinstate all of the outstanding issues in connection with this filing. All of the applications were filed using a customer number, but none are visible to the counsel in private PAIR. Despite several requests to reinstate the above-list of applications, the Office has not reinstated any of the cases.

A copy of the original transmittal page follows:

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14230 U.S. 170
06/24/03

Approved for use through 1001/2002, OMB 0607-0002
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**UTILITY
PATENT APPLICATION
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No. **NWK1581**

First Inventor **James A. Leach Jr.**

Title **REGULATED PIPE CONCEALER**

Express Mail Label No. **EU187567775US**

APPLICATION ELEMENTS
See MPEP chapter 600 concerning utility patent application contents.

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)
(Attach as original and a duplicate for processing)

2. ☒ Applicant claims small entity status.
See 37 CFR 1.27.

3. ☒ Specification (Total Pages **14**)
(Prepare a transmittal form listing)
- Descriptive title of the invention
- Cross References to Related Applications
- Statement Regarding Fed sponsored R & D
- Reference in sequence listing, a table,
or a computer program listing appendix
- Background of the invention
- Brief Summary of the invention
- Brief Description of the Drawings (if filed)
- Detailed Description
- Claims
- Abstract of the Disclosure

4. ☒ Drawing(s) (35 U.S.C. 113) (Total Sheets **2**)

5. Oath or Declaration (Total Pages **2**)
a. ☒ Newly executed (original or copy)
b. ☐ Copy from a prior application (37 CFR 1.63 (d))
(for continuation/divisional with Box 18 completed)
i. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached covering inventor(s)
named in the prior application, see 37 CFR
1.63(a)(2) and 1.53(a).

6. ☐ Application Data Sheet. See 37 CFR 1.76

7. ☐ CD-ROM or CD-R in duplicate, large scale or
Computer Program (Appendix)

8. Nucleotide and/or Amino Acid Sequence Submission
(if applicable, all necessary)
a. ☐ Computer Readable Form (CRF)
b. Specification Sequence Listing on:
i. ☐ CD-ROM or CD-R (2 copies); or
ii. ☐ paper
c. ☐ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s))

10. ☐ 37 CFR 3.73(b) Statement (when there is an assignee) ☒ Power of Attorney

11. ☐ English Translation Document (if applicable)

12. ☐ Information Disclosure Statement (IDS) PTO-1449 ☐ Copies of IDS Citations

13. ☐ Preliminary Amendment

14. ☐ Return Receipt Postcard (MPEP 500)
(Should be specifically itemized)

15. ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)

16. ☒ Nonpublication Request under 35 U.S.C. 122
(b)(2)(B)(i). Applicant must attach form PTO/SB/35
or its equivalent.

17. ☐ Other:

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:
☐ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) or prior application No. _____
Prior application information: Extension: _____ Great Art List _____
For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of this continuing continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

☒ OFFICE: MAIL OR FAX CODE (SEE) ☐ Correspondence address below

Name **Anthony Edw. J Campbell**

Address **6721 Northridge Drive**

City **Dallas** State **TX** Zip Code **75214-3156**

Country **US** Telephone **214/841-4500** Fax **561/264-6176**

Name (Print/Type) **Anthony Edw. J Campbell** Registration No. (Attorney/Agent) **38,619**

Signature **[Signature]** Date **6/24/03**

Declaration Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Applications, Washington, DC 20231.

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Note that this transmittal page clearly shows that the customer number box is selected.

Next, a copy of a Notice of Allowance mailed for this Application is provided:

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1468
Alexandria, Virginia 22312-1468
www.uspto.govCORRECTED
NOTICE OF ALLOWANCE AND FEE(S) DUE2350 06/24/2009
Anthony Edw. J Campbell
5721 Northridge Drive
Dallas, TX 75214-3156

EXAMINER

BRINSON, PATRICK F

ART UNIT

PAPER NUMBER

1754

DATE MAILED: 06/23/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,235	06/24/2009	James A. Leach JR.	NW 11381	5606

TITLE OF INVENTION: INSULATED PIPE CONCEALER

APPLX TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEES DUE	DATE DUE
nonprovisional	YES	\$700	\$0	\$700	09/23/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-R5B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

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PTOL-R5 (Rev. 12/04) Approved for use through 04/09/2009.

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It is requested that the Office examine the address block that is circled, and further examine the address blocks of all Notices of Allowance that were mailed to Petitioner in this case, and also examine all address blocks of all cases previously recited by Petitioner as not being properly linked to his Customer Number.

5 In dismissing the Petition under 37 CFR 1.137(a) in this case, the Office stated:

In both the declaration and transmittal letter submitted on filing the application, the practitioner specified Customer Number 30243, as well as the typed correspondence address of 6721 Northridge Drive, Dallas, Texas 75214-3156. Therefore, in keeping with 37 CFR 1.33(a), the Office selected the address associated with the Customer Number over the typed correspondence address.

However, this assertion is incorrect, as shown by the address block. In the case of an address block linked to a Customer Number, the Customer Number appears in the address block. In the month of July 2003, after the Attorney for Applicant changed the
10 address linked to his Customer Number, the following Notices of Allowance were sent to the counsel at updated Customer Number address of PO Box 160370, Austin TX 78716:



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMERCIAL FOR PATENTS
PO Box 1470
Alexandria, Virginia 22304-1470
www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

30243 3790 07/10/2003
ANTHONY EDW. J CAMPBELL
PO BOX 160370
AUSTIN, TX 78716

EXAMINER

VINSON, BRIANN

ART UNIT

CLASS-SUBCLASS

391

D04-J1500

DATE MAILED: 07/10/2003

APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29176,213	02/20/2003	Rafaela Prasad	VER1115	2471

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 100
Washington, D.C. 20543-0100
www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

3045 1943 07/11/2003
ANTHONY EDW. J CAMPBELL
PO BOX 160370
AUSTIN, TX 78716

EXAMINER

BAYNHAM, HOLLY H

ART UNIT

CLASS-SUBCLASS

3911

D04-305000

DATE MAILED: 07/11/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
3045	07/11/2003	Doane J. Margenau	LIN749	7554



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 100
Washington, D.C. 20543-0100
www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

30245 1943 07/10/2003
ANTHONY EDW. J CAMPBELL
PO BOX 160370
AUSTIN, TX 78716

EXAMINER

ZEC, FRIP

ART UNIT

CLASS-SUBCLASS

3744

D02-003000

DATE MAILED: 07/10/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10369481	02/26/2003	Harka M. George	LIN945	7235

Again, it is requested that the address block be examined. Petitioner also encourages the Office to review other Notices of Allowance mailed to Customer Number 30245 and not subsequently returned to the Office during the last two quarters of 2003, the calendar year 2004, the calendar year 2005, and the first quarter of 2006. In the case of all address blocks correctly linked to the proper Customer Number of the Attorney of Record, the Customer Number (30245) is printed above the first name of the Attorney. This is circled in all of the examples shown. As previously shown, the Customer Number did not appear in the address block of the Petitioner's Application. Therefore, the Customer Number was not properly linked to the Application.

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2. PTO made no effort to correct address.

Where an Office Action is returned as undeliverable, the Office must make an attempt to ascertain the correct address and re-mail the Office Action, with the period being reset
5 with the date of re-mailing. Note In re Gourtoff, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924). There is no evidence in the file record that the Office ever attempted to ascertain the correct address and re-mail the Notice of Allowance, which is contrary to the Office's own procedures. See MPEP 707.13. The record shows that on 11/4/2004, 1/25/2005, 7/11/2005 and 6/12/2006, mail sent by the Patent Office was returned as
10 undelivered. [The 11/4/2004 return appears to be incorrectly logged as a miscellaneous incoming letter.] All undelivered mail that was returned was sent to the same address, and there is no evidence that the Office ever attempted to correct the address. However, the record also shows that in a Notice of Allowability dated 1/12/2005 and subsequently returned to the Patent Office, the Examiner had conducted a telephone interview with the
15 attorney for the Applicant on January 3, 2005. Therefore, it is evident that the Office could readily reach the Applicant's attorney via phone to verify his address, but, contrary to its procedures, the Office did not attempt to ascertain the correct address. The Office could have ascertained this information by checking its attorney roster, Customer
Number information or telephoning the Applicant's attorney on any of the four separate
20 occasions when this step should have been performed.

Based on the evidence of record and the long path of this petition, it is believed this petition and the petition prior to it should be treated as falling under 37 CFR 1.181(a), wherein no petition fee is required. The same evidence applies to the other applications enumerated in Table 1 of the petition document filed 9/28/2009, and those should also be
25 reinstated without additional fee. In addition, any petition fees paid should be refunded, an action which is hereby requested.

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In conclusion, counsel for petitioner respectfully requests that the patent be issued in this case and all other applications be reinstated.

Respectfully submitted,




Anthony Edw. J Campbell
Reg. No. 39,619
Customer No. 30,245
Phone 512/306-0321
Attorney for Applicant

Date: April 13, 2010**Certificate of Facsimile**

I hereby certify that this correspondence is being transmitted by fax to the United States Patent and Trademark Office, Fax No. 571-273-8300 on the date shown below.

Anthony Edw. J Campbell

*Tuesday, April 13, 2010*